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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/197,278

11/20/1998

BRIAN J. BROWN

S63.2-6769

1094

490

7590

06/01/2004

VIDAS, ARRETT & STEINKRAUS, P.A.  
6109 BLUE CIRCLE DRIVE  
SUITE 2000  
MINNETONKA, MN 55343-9185

EXAMINER

BUI, VY Q

ART UNIT

PAPER NUMBER

3731

DATE MAILED: 06/01/2004

39

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/197,278

Applicant(s)

BROWN ET AL.

Examiner

Vy Q. Bui

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 11 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 39-41, 43-48, 50, 52-54 and 56-58 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 39-41, 43-50, 52-54 and 56-58 is/are rejected.
- 7) ☒ Claim(s) 49 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 30, 32, 35.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(h) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 3/11/2004 has been entered.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

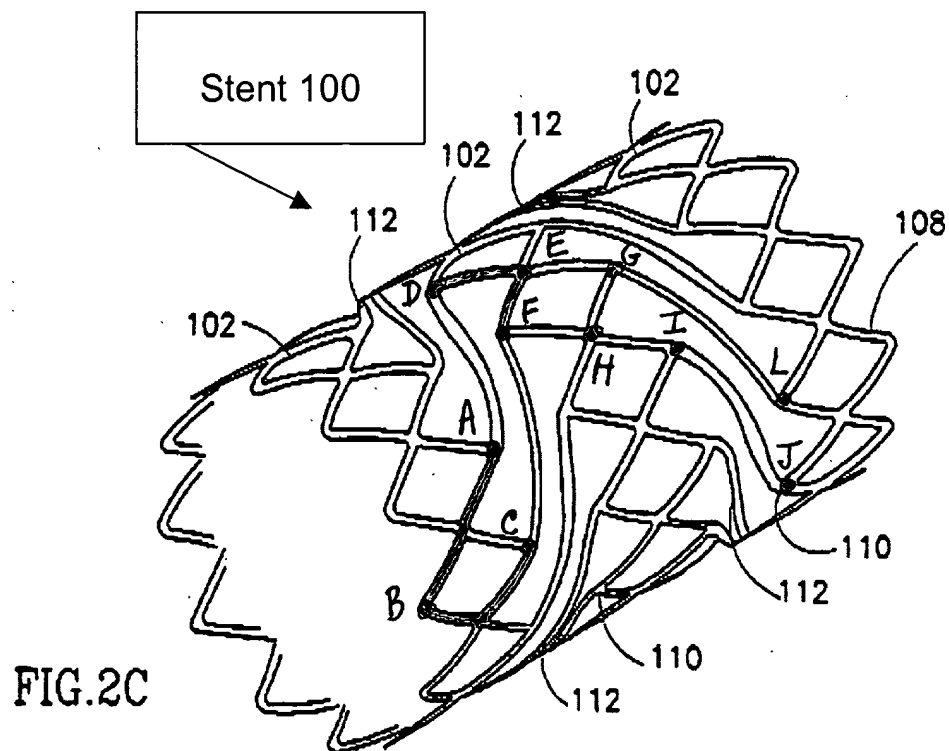
(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

1. Claims 50, 53-54, 57 are rejected under 35 U.S.C. 102(e) as being anticipated by PINCHASIK et al. (5,449,373).

As to claims 50, 53-54 and 57, PINCHASIK (Figs. 2A-2B and Fig. 2C reproduced below) discloses stent 100 comprising first undulating band-like element, second undulating band-like element and third undulating band-like element 102 interconnected by interconnecting elements 112, first interconnecting elements DA and CF are connected one to another via first path ABC (along the first undulating band-like element) longer than second path DEF (along the second undulating band-like element) and first interconnecting elements DE and CF are connected one

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to another via first path ABC (along the first undulating band-like element) longer than second path GHI (along the second undulating band-like element) connecting second interconnecting elements IJ and GL.



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2. Claims 46-48 and 58 are rejected under 35 U.S.C. 102(e) as being anticipated by MATHIS et al. (6,129,755).

As to claims 46-48 and 58, MATHIS (Figs. 3-4, for example) discloses stent 1 comprising a proximal undulating band-like element, an intermediate undulating band-like element, distal undulating band-like element, second distal undulating band-like element, substantially linear interconnecting elements comprising first interconnecting elements, second interconnecting elements, and third interconnecting elements as recited in the claims.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 39-41, 43-45, 52 and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over MATHIS et al. (6,129,755) in view of ROUBIN et al. (6,106,548).

As to claims 39-41, 42-44, MATHIS (Figs. 3-4, for example) discloses stent 1 comprising a first undulating band-like element 152(a), an second undulating band-like element 152(b), third undulating band-like element 152(c), fourth undulating band-like element 152(d), substantially linear interconnecting elements 70 comprising first interconnecting elements, second interconnecting elements, and third interconnecting elements substantially as recited in the claims, except for the number of peaks of the first undulating band like element separating circumferential adjacent first interconnecting elements is less than the number of peaks of the second undulating band like element separating circumferential adjacent second

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interconnecting elements. However, ROUBIN (Figs. 3, 9; Col. 7, lines 1-43) discloses stent 40 without some of connecting elements 48 to provide a change in the flexibility of the stent for facilitating deployment of the stent in a body vessel (col. 7, lines 1-4). In view of ROUBIN, it would be obvious to one of ordinary skill in the art at the time the invention was made to omit one or more first connecting element 70 between band-like elements 152(a) and 152(b) of MATHIS stent to provide a change in the flexibility of the stent for facilitating deployment of MATHIS stent in a body vessel.

As to claims 45, 52, 56, as mentioned above, MATHIS (Figs. 3-4, for example) discloses substantially the claimed invention, except for the first and second band-like elements have different amplitudes. ROUBIN (Fig. 4A, 10; col. 7, lines 44-49) discloses different band-like elements band-like elements of different amplitudes for different flexibility. In view of ROUBIN, it would be obvious to one of ordinary skill in the art at the time the invention was made to provide a MATHIS stent with different amplitudes for first and second band-like elements so as to provide different flexibility for the modified MATHIS stent.

***Allowable Subject Matter***

Claim 49 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vy Q. Bui whose telephone number is 703-306-3420. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, McDermott or Shaver can be reached on 703-308-0858. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



May 25, 2004

Vy Q. Bui  
Primary Examiner  
Art Unit 3731